



THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 22 1997

Mr. David Blackmon
Vice Chairman, Royalty Policy
Committee
Burlington Resources
801 Cherry Street
Fort Worth, Texas 76102

Dear Mr. Blackmon:

Thank you for the Royalty Policy Committee's letter of March 27, 1997, transmitting to me the Committee's report and recommendations concerning Appeals and Alternative Dispute Resolution. We appreciate the significant time, thought, and hard work that the members of the Committee, and particularly the Appeals and Alternative Dispute Resolution Subcommittee, put into this report.

The various parts of the Department of the Interior affected by this proposal have considered it carefully over the past several months. As a result, I am able to report back to you today that we largely agree with the report's recommendations and therefore plan to move forward to implement the recommendations with some changes and clarifications. Our specific response to each of the report's recommendations and the implementation schedule are enclosed.

We plan immediate efforts to implement those parts of the Royalty Policy Committee's recommendations that do not require changes in our regulations and to prepare revised proposed regulations that would enable us to implement the remaining items. Of course, the public will have the opportunity to comment on the proposed regulations, which may change, before they become final.

Thank you once again for the fine work of your Committee.

Sincerely,

Enclosures

Royalty Policy Committee Recommendations on Appeals and ADR
and Interior Department Response

1. Resolve royalty policy issues prior to audits. We agree.

Although we will never be able to foresee every policy dispute that may arise, we will try to identify possible sources of dispute at the earliest possible time and to resolve them before we conduct audits and issue bills for additional royalty. We have already begun to resolve policy issues earlier through our Royalty Policy Board (created in 1995) which is made up of the MMS Associate Directors for Royalty Management and Policy and Management Improvement, chaired by the MMS Deputy Director, and advised by the Associate Solicitor for Mineral Resources.

2. Encourage informal resolution of disputes. We agree.

For those disputes involving Federal oil and gas leases, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 requires that we hold at least one settlement conference. We plan to extend this practice to all of our appeals. Holding such conferences at an early stage and involving the people most knowledgeable about the dispute will lead to resolution of many cases. We also plan to include people who are less personally involved with the disputed issues to try to facilitate an accommodation.

3. Clarification of standing of Indian lessors and States. We agree that the standing of these entities must be clarified in such a way that provides them with full involvement, though in a slightly different way than recommended by the Committee.

In order to promote consistency in administration of royalty collections, the Minerals Management Service (working with the Bureau of Indian Affairs (BIA) for any orders that may eventually be issued by tribes) should have the authority to modify or rescind royalty related orders issued by States or tribes. If the MMS or BIA modifies or rescinds an order affecting tribal lands or Federal lands within a State, any affected State or Indian lessor should have the opportunity to argue their point of view before the Interior Board of Land Appeals (IBLA). Thus, they should have standing to file an appeal with IBLA opposing any MMS/DIA action to modify or rescind an order that they issued or that would directly affect their revenues. They also should have the right to file briefs *amicus curie* with IBLA in cases where they support the MMS position or where the case indirectly affects their revenues.

4. Proposed structure of a new appeals process. We agree with most aspects of the appeals process proposed by the Committee. In particular, we support the emphasis on early policy resolution, settlement discussions, time limitations for all appeals, and joint development of the record. We also agree that IBLA is the appropriate forum to obtain

an independent review of legal issues within the Department. However, as listed below, there are a few aspects of the process that we would clarify or modify:

- a. We would clarify that the preliminary statement of issues that appellants are required to file with their notice of appeal must specifically identify their legal and factual disagreements with the MMS action. However, consistent with the Royalty Policy Committee recommendation, it should not be a legal brief, providing detailed analysis and citations. This clarification will help to ensure productive, well-informed record development and settlement efforts.
- b. Rather than preparing an internal recommendation memorandum (shared with appropriate tribes and States) as proposed by the Committee, MMS (BIA for Indian issues) will issue a memorandum/letter decision to the appellant (with copies to appropriate Indian lessors and States). As recommended by the Royalty Policy Committee, these decisions would be made collegially within the Department of the Interior (including input from involved State and tribal auditors), using the preliminary statement by the appellant and the record developed during the first 120 days of the appeal. These decisions would be much shorter and faster than traditional MMS appeals decisions; discussion of legal issues would not take place at this point but rather would be reserved for the IBLA after a full briefing. The purpose of these decisions would be to ensure that actions conform to MMS/BIA policy before defending them for legal sufficiency at IBLA.
- c. Before the appellant is required to file its brief to the IBLA, the Assistant Secretary for Land and Minerals Management or the Assistant Secretary for Indian Affairs could take jurisdiction over the case. In this event, the briefing process would proceed much as it would before IBLA, but the decision maker would be the Assistant Secretary instead. The timeframes would be the same as if the case were before IBLA. These decisions would be designed for general publication and to establish precedent on new issues.

With the modifications listed above, we believe that we can achieve the goals of the Royalty Policy Committee while protecting taxpayers' and Indian lessors' interests and recognizing constraints to the Department's budget. In particular, we think that this approach will lead to faster and less costly resolution of disputes, better development of the factual record, and improved participation by affected States and tribes in the process.

**Implementation Schedule for
Royalty Policy Committee Recommendations on Appeals/ADR**

Letter to RPC approving recommendations	September 1997
Form implementation and rule writing teams (MMS, IBLA, and Solicitor's office members)	September 1997
Dear Payor letter announcing changes that can be made under existing regulations	December 1997
Proposed changes to MMS/IBLA rules published in Federal Register	January 1998
Comments on proposal due	March 1998
Final rule published	July 1998
Effective date of new rule	August 1998